



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0109]

RIN 1625-AA00

Safety Zone; Hudson River, Jersey City, NJ, Manhattan, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of the Hudson River in the vicinity of Manhattan, NY, and Jersey City, NJ for the Louis Vuitton America's Cup World Series New York 2016 regatta. This temporary safety zone is necessary to protect all participating and spectator vessels from the hazards associated with regattas in high traffic areas. This rule is intended to restrict all vessels from a portion of the Hudson River during the event.

DATES: This rule is effective from 11:30 a.m. on Friday, May 6, 2016 through 5:00 p.m. on Sunday, May 8, 2016. This rule will be enforced between 11:30 a.m. to 5:00 p.m. from Friday, May 6, 2016 through Sunday, May 8, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0109 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LTJG Christopher Dunn, Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718-354-4012, email christopher.e.dunn@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The event sponsor was late in submitting the marine event application. This late submission did not give the Coast Guard enough time to publish an NPRM and solicit comments

from the public before establishing a safety zone. The nature of the Louis Vuitton America's Cup World Series New York 2016 requires the immediate establishment of a safety zone. Publishing an NPRM and delaying the effective date of this rule to await public comment inhibits the Coast Guard's ability to fulfill its statutory mission to protect ports, waterways, and the maritime public. We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. The rule must become effective on the date specified in order to provide for the safety of spectators and vessels operating in the area near this event. Delaying the effective date of this rule would be contrary to the public interest and would expose spectators and vessels to the hazards associated with the regattas. The sponsor advised that any change to the date of the event would cause economic hardship on the event sponsor, negatively impacting other activities being held in conjunction with the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. The Louis Vuitton America's Cup World Series 2016, is planned to take place over a 3 day period between the dates of May 6 - 8, 2016, on the Hudson River in the vicinity of Manhattan, NY. The Series is composed of daily racing of high-speed, high-performance sailing vessels. The racing of these vessels on the Hudson River along Manhattan, NY is expected to generate national and international media coverage, and attract spectators on a number of recreational vessels and excursion vessels.

The Coast Guard is proposing establishing this safety zone, in conjunction with the Louis Vuitton America's Cup World Series 2016, to ensure the protection of the maritime public and event participants from the hazards associated with large-scale marine events. The Coast Guard

anticipates some concern with the proposed safety zone by mariners, especially commercial vessel operators, as vessel transits on the Hudson River along Manhattan may be restricted for a portion of each day for three consecutive days. The Hudson River is the site of many marine events each year and recreational and commercial vessel traffic is frequently heavy. The Coast Guard Sector New York Vessel Traffic Service routinely works with the local marine pilot organization and shipping agents to coordinate vessel transits during marine events on the Hudson River, and will continue to do so for the Louis Vuitton America's Cup World Series 2016 to avoid major interruptions to shipping schedules.

IV. Discussion of the Rule

The Louis Vuitton America's Cup World Series 2016 regatta is scheduled to occur on the navigable waters of a Hudson River in the vicinity of Manhattan, NY and Jersey City, NJ from May 6 - 8, 2016. This event will involve high-speed, high-performance sailing vessels that will compete in a series of daily races. This event is expected to generate national and international media coverage, and attract thousands of spectators on hundreds of commercial and recreational vessels.

The COTP proposes the establishment of a temporary safety zone on the navigable waters of the Hudson River to ensure the protection of the maritime public and event participants from the hazards associated with this event. This temporary safety zone will begin in the vicinity of the Battery and extend north to approximately North Cove, Manhattan, NY. The Coast Guard anticipates some concern by mariners, especially commercial vessel operators, that vessel transits on the Hudson River along Manhattan may be restricted for a portion of each day for three consecutive days. To ensure the safe and efficient movement of vessels in this area, a portion of the navigable waterway will remain available for use along the western side of the navigable

channel. In addition, the Coast Guard Sector New York Vessel Traffic Service will continue to communicate and coordinate vessel movements that occur in the vicinity of this area for the entirety of this marine event.

Safety zone enforcement will be effective each day over a three consecutive day period starting May 6 - 8, 2016. Safety zone enforcement will begin each day at approximately 11:30 a.m. and continue until the Americas Cup races are completed for the day, but no later than 5:00 p.m.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The potential impact on the public will be minimized for the following reasons: vessels will only be restricted from the designated safety zone for a maximum of 6 hours per day for a maximum of 3 days; marine traffic will be permitted to transit the Hudson river along the New Jersey side of the river for the duration of this event and will be minimally impacted by the

establishment of a temporary safety zone; vessels including those that require access to pier berths along the Manhattan side of the river will be permitted to enter or pass through the affected waterway with the permission of the COTP or the COTP's representative.

Notifications of this event and its associated safety zone will be made to mariners through advisory notice, Local Notice to Mariners, event sponsors, and local media. Notifications will be made well in advance of the event's commencement and last throughout the event.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION

CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone lasting approximately 6 hours for 3 days and is designed to minimize the impact to vessel traffic on the navigable waters, vessels will be able to transit around the zone in a safe manner. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked

to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165 -- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5 and Department of Homeland Security Delegation No. 0170.1

2. Add §165.T01-0109 to read as follows:

§165.T01-0109 Safety Zone; Hudson River, Manhattan, NY.

(a) Regulated Area. The following area is a temporary safety zone: all navigable waters of the Hudson River bound by the following coordinates: beginning at 40°43.441'N, 74°01.538'W; thence to 40°43.390'N, 74°01.015'W; thence to 40°42.846'N, 74°01.143'W; thence to 40°41.992'N, 74°01.230'W; thence to 40°41.995'N, 74°01.916'W ; thence back to the starting point.

(b) Effective Period. This rule will be effective from May 6 - 8, 2016. This rule will be enforced daily from approximately 11:30 a.m. until the America's Cup races are completed for the day, but no later than 5:00 p.m.

(c) Definitions. The following definitions apply to this section:

(1) Designated Representative. “Designated representative” means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the COTP New York, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. “Official patrol vessel” means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for those participating in the regatta, will be allowed to transit the safety zone without the permission of the COTP or designated representative.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) Spectators or other vessels shall not anchor, block, loiter, or impede the movement of event participants or official patrol vessels in the safety zones.

(5) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP or the designated representative via VHF channel 16, the Vessel Traffic Service via VHF channel 14 or the Sector New York Command Center via 718-354-4353 to obtain permission to do so.

Dated: April 12, 2016

M.H. Day,

Captain, U.S. Coast Guard,

Captain of the Port New York

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